

U. S. FEDERAL COURT OF APPEALS
NORTHERN
STATE OF ILLINOIS
7TH. CIRCUIT

BR
FILED

APR 28 2008
APR 28, 2008
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

ENRICO LEVY #A93734

PETITIONER

V

STATE OF ILLINOIS, DEPT. OF
CORRECTIONS, PINCKNEYVILLE
WARDEN EVANS, LAWRENCE
WARDEN LEE RYKER

RESPONDENT

CASE NO. 08-cv-573

NOTICE OF FILING

TO: LISA MADIGAN
GEN. LAW SECT. 12FL.
ILLINOIS ATTORNEY GENERAL
100 W. RANDOLPH
CHICAGO, ILL. 60601

YOU ARE HEREBY NOTIFIED THAT ON

2008, I HAVE CAUSED THE
ATTACHED DOCUMENTS TO BE SENT TO THE ABOVE-NAMED PARTY(IES).

BY: U.S. MAIL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ATTACHED DOCUMENTS
HAVE BEEN SERVED ON THE ABOVE-NAMED PARTY(IES), THE SAME BEING SENT VIA
THE U.S. MAIL, WITH PROPER POSTAGE HAVING BEEN PAID AT THE LAWRENCE
CORRECTIONAL CENTER ON 2008,

Enrico Levy #A93734

PLAINTIFFS

MEMORANDUM IN SUPPORT OF PLRA

MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS

IN COMPLIANCE, HERE I, PETITIONER, CONTEND THE DISTRICT COURT DENIED MY PETITION FOR LEAVE TO PROCEED ON APPEAL BASED ON THE FOLLOWING REASONS.

THE DISTRICT COURT MEMORANDUM AND ORDER OF 2008, MOTIONS DENIED.

WHEREBY, THE COURT STATES, NOTHING IN THE COMPLAINT SUPPORTS AN ALLEGATION OF IMMINENT DANGER OF SERIOUS PHYSICAL INJURY.

FILED

APR 28 2008 *aw*

APR 28, 2008

MICHAEL W. BOBBINS
CLERK, U.S. DISTRICT COURT

THE DISTRICT COURT DENIAL FOR LEAVE TO APPEAL IS ERRONEOUS BECAUSE THIS PETITION DOES ~~NOT~~ FAIL TO A FRIVOLOUS STANDARD, THEREBY, IT DOES HAVE MERIT AND COGNIZABLE TO THE CONTRARY. PETITIONER HAS ESTABLISHED ALL THE PRELIMINARY ELEMENTS FOR PURPOSE OF PROPER AVENUE OF RELIEF, THAT THIS COGNIZABLE CLAIM IS BASED ON PHYSICAL INJURIES, PAIN AND SUFFERING.

DELIBERATE INDIFFERENCE, CRUEL AND UNUSUAL PUNISHMENT, WHEREBY, DILIGENT RESEARCH AND LAW IN SUPPORT ATTACHED TO REQUEST, CLEARLY INDICATE THE RESULTS OF VIOLATION OF PRISONER CONSTITUTIONAL STATE AND FEDERAL RIGHTS.

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Suzanne B. Conlon	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 573	DATE	2/15/2008
CASE TITLE	Enrico Levy # A 93734 v. State of Illinois Dept. of Corrections		

DOCKET ENTRY TEXT:

The Plaintiff's motion for leave to file in forma pauperis is denied [3] pursuant to 28 U.S.C. § 1915(g) and the complaint is summarily dismissed for failure of the plaintiff to advise the court that he had "struck out." The case is terminated. Any pending motions are denied as moot. Having brought this action, the plaintiff nevertheless remains obligated to pay the full \$350 filing fee. Before pursuing any future litigation, the plaintiff must pay any outstanding fees. The clerk shall send a copy of this order to the trust officer at Lawrence Correctional Center.

■ [For further details see text below.]

Suzanne B. Conlon
Docketing to mail notices.

STATEMENT

The Plaintiff, Enrico Levy, has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983 and seeks leave to proceed *in forma pauperis*. The motion must be denied because the plaintiff has accumulated at least three "strikes."

The Prison Litigation Reform Act of 1995 (PLRA), enacted on April 26, 1996, provides that a prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915 "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). At least three of the plaintiff's previous actions have been dismissed in this district on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted. *See, e.g., Levy v. State of Illinois*, 96 C 4939, dismissed 1/21/97; *Levy v. State of Il.*, 96 C 4705, dismissed 3/10/97, and *Levy v. State of Il.*, 96 C 7799, dismissed on 4/22/97. In fact, the court previously advised the plaintiff that he had "struck out." *See Order in 06 C 4449*, on 8/28/06. Notwithstanding his knowledge that he is barred from doing so, the plaintiff has nevertheless sought leave to proceed *in forma pauperis*, and without disclosing his 1915(g) status to the court. Consequently, the plaintiff's effective "fraud" on the court must "lead to immediate termination of the suit." *Sloan v. Lesza*, 181 F.3d 857 (7th Cir. 1999). The complaint is accordingly dismissed with prejudice, as nothing in the complaint supports an allegation of imminent danger of serious physical injury.

However, having brought this action, the plaintiff remains obligated to pay the full \$350 filing fee. *See* 28 U.S.C. § 1915(b)(1). Before pursuing any future litigation, the plaintiff must pay any outstanding fees.

Suzanne B. Conlon

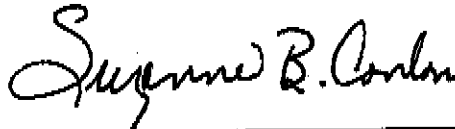
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Name of Assigned Judge or Magistrate Judge	Suzanne B. Conlon	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 573	DATE	4/7/08
CASE TITLE	Enrico Levy # A93734 v. State of Illinois Dept. Of Corrections		

DOCKET ENTRY TEXT:

The plaintiff's motion for leave to appeal *in forma pauperis* is denied pursuant to 28 U.S.C. § 1915(g). The court directs the clerk to send a copy of this order to the PLRA staff attorney. Having filed this notice of appeal, the Plaintiff nevertheless remains obligated to pay the full appellate and docketing fees. Before pursuing any future litigation, the Plaintiff must pay any outstanding fees. Any other pending motions are denied as moot. The court construes plaintiff's motion also as his notice of appeal of this court's February 15, 2008 order terminating this case.

■ [For further details see text below.]
Docketing to mail notices.


STATEMENT

The Plaintiff, Enrico Levy, a state prisoner, has filed a notice of appeal from the court's order of February 15, 2008, entering final judgment in this action. Plaintiff seeks to appeal *in forma pauperis*. The motion must be denied because the Plaintiff has accumulated at least three "strikes." Further, Plaintiff was told by this court that he failed to inform the court that he had struck out. Yet now again, he attempts to submit a motion to proceed *in forma pauperis* on appeal without informing the court that he has struck out.

The Prison Litigation Reform Act of 1995 (PLRA), enacted on April 26, 1996, provides that a prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915 "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

At least three of the plaintiff's previous actions have been dismissed on the grounds that they were frivolous, malicious, or failed to state a claim upon which relief may be granted. See, e.g., *Levy v. State of Illinois*, 96 C 4939, dismissed 1/21/97; *Levy v. State of IL*, 96 C 4705, dismissed 3/10/97; and *Levy v. State of IL*, 96 C 7799, dismissed 4/22/97. In fact, the court previously advised the Plaintiff that he had "struck out." See prior Order in this case. Notwithstanding his knowledge that he is barred from doing so, the Plaintiff has nevertheless sought leave to appeal *in forma pauperis*, and without disclosing his 1915(g) status to the court. Consequently, the plaintiff's effective "fraud" on the court must "lead to immediate termination of the suit." *Sloan v. Lesza*, 181 F. 3d 857 (7th Cir. 1999). However, having brought this action, the Plaintiff remains obligated to pay the full appellate and docketing fees. See 28 U.S.C. § 1915(b)(1). Before pursuing any future litigation, the Plaintiff must pay any outstanding fees. *Id.* Finally, the court notes that Plaintiff's claims involve conditions at two prisons not located in this court's jurisdiction.



Courtroom Deputy
Initials:

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Order Form (01/2005)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Suzanne B. Conlon	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 0573	DATE	3/17/2008
CASE TITLE	ENRICO LEVY vs. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, ET AL		

DOCKET ENTRY TEXT

Petitioner's motion [4] for appointment of counsel, motion to reconsider and amend and motion for extension of time with affidavit are denied.

Suzanne B. Conlon

Notices mailed by Judicial staff.

Courtroom Deputy Initials:	WH
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